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PATENT TRADEMARK OFFICE

Docket No: 1313/1F022-US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Harding et al.

Serial No.: 09/<sup>557804</sup>~~577,804~~

Art Unit: 1623

Confirmation No.: 8941

Filed: April 25, 2000

Examiner: E. White

**For: CELLULOSE ETHERS AND METHOD OF PREPARING THE SAME**

SUPPLEMENTAL APPEAL BRIEF

Hon. Commissioner of  
Patents and Trademarks  
Washington, DC 20231

Sir:

Appellants submit this Supplemental Appeal Brief in triplicate as required by 37 C.F.R. §1.192, in response to the April 4, 2003 Office Action. No fee is believed due with this Supplemental Appeal Brief; however, if any fee is due, the Commissioner is authorized to charge any deficiency up to \$2,000.00 to Deposit Account No. 04-0100.

### **REAL PARTY IN INTEREST**

The real party in interest is BKI Holding Corporation.

### **RELATED APPEALS AND INTERFERENCES**

Appellants' attorney is not at this time aware of any related appeals and/or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **STATUS OF CLAIMS**

Although claims 1-63 and 65-73 are pending, claims 1-38, 40-59, and 65-73 have been withdrawn from consideration. Claims 39 and 60-63, which are shown in the appendix, are on appeal.

### **STATUS OF AMENDMENTS**

The Amendment filed January 15, 2003, which canceled claim 64, has been entered. No other amendments prior to the filing of this Supplemental Appeal Brief have been submitted by Appellant subsequent to the Final Office Action of September 18, 2002.

### **SUMMARY OF INVENTION**

The summary of invention from the January 15, 2003 Appeal Brief is incorporated by reference.

## **ISSUES**

Are claims 39 and 60-63 patentable under 35 U.S.C. §102(a) over European Patent Publication No. 879,827-A1 (EP '827)?

## **GROUPING OF CLAIMS**

Claims 39 and 60-63 stand or fall together.

## **ARGUMENT**

The arguments presented in the January 15, 2003 appeal brief are applicable to the outstanding rejection and incorporated by reference.

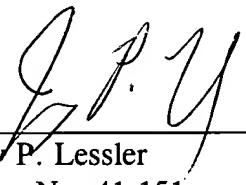
In the April 4, 2003 Office Action, the Examiner asserts that the carboxymethyl cellulose ("CMC") of the present invention "does not appear to be different" than the CMC of EP '827. As mentioned in the January 15, 2003 appeal brief, the CMC of the present invention derived from a given cellulose pulp has a significantly greater viscosity than CMC derived from a similar cellulose pulp by prior art methods, such as those described in EP '827. The Examiner fails to consider or address the significant viscosity difference between the CMC of the present invention and that of EP '827 in the April 4, 2003 Office Action. This difference is shown in Tables 1-4 of the appeal brief. The Examiner then improperly concludes that the presently claimed CMC is anticipated by EP '827.

Finally, in the April 4, 2003 Office Action, it is asserted that EP '827 teaches a CMC having a viscosity greater than 12 cP as recited in the pending claims. The viscosity measurement in claims 39 and 60-63 refers to the viscosity of the mercerized and recovered

cellulose pulp (prior to being reacted with alkali for a second time and etherified). It does not, therefore, refer to the viscosity of the CMC.

For the foregoing reasons, EP '827 fails to anticipate the presently claimed invention and the rejection of claims 39 and 60-63 should be reversed by the Board. Such a disposition is earnestly solicited.

Respectfully submitted



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Jay P. Lessler  
Reg. No. 41,151  
Attorney for Applicants

DARBY & DARBY  
Post Office Box 5257  
New York, NY 10150-5257  
Phone (212) 527-7700